



February 17, 2006

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## ENGROSSED SENATE BILL No. 40

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DIGEST OF SB 40 (Updated February 13, 2006 12:00 pm - DI 107)

**Citations Affected:** IC 31-9; IC 31-14; IC 31-17.

**Synopsis:** Relocation issues in family law matters. Requires an individual who has or is seeking custody of or parenting time with a child and who intends to relocate to: (1) provide notification by registered or certified mail not later than 90 days before the individual intends to move to an individual who has or is seeking custody of, parenting time with, or grandparent visitation with the child; and (2) provide specific information in the notice unless providing the information would create a significant risk of substantial harm to the individual or the child. Provides that a court may consider the intent to relocate a child in an initial custody hearing. Provides that: (1) not later than 60 days after a nonrelocating parent receives the notice, the nonrelocating parent may file a motion with the court to prevent the  
(Continued next page)

**Effective:** July 1, 2006.

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**Ford, Breaux, Steele, Bowser**

(HOUSE SPONSORS — DUNCAN, THOMAS, SUMMERS, KERSEY)

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January 9, 2006, read first time and referred to Committee on Judiciary.  
January 11, 2006, reported favorably — Do Pass.  
January 17, 2006, read second time, amended, ordered engrossed.  
January 18, 2006, engrossed.  
January 19, 2006, read third time, technical corrections, passed. Yeas 48, nays 1. Re-engrossed.

**HOUSE ACTION**

February 2, 2006, read first time and referred to Committee on Judiciary.  
February 16, 2006, amended, reported — Do Pass.

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relocation of a child; (2) if the nonrelocating parent fails to file a motion with the court, the individual may relocate; (3) upon request of either party, the court shall hold a full evidentiary hearing; and (4) the relocating individual has the burden of proof that the relocation is made in good faith and for a legitimate purpose. Establishes: (1) additional factors the court may consider in determining whether to modify the custody, parenting time, grandparent visitation, or child support orders in actions concerning relocation; and (2) factors the court may consider in granting or denying a petition to prevent relocation of a child. Requires a grandparent seeking visitation rights to file a petition in a circuit, superior, or probate court. (Current law requires a grandparent to file in a circuit or superior court.) Repeals provisions concerning notice of the relocation of a child in child custody matters. (The introduced version of this bill was prepared by the child custody and support advisory committee.)

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February 17, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 40

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A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 31-9-2-48.3 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2006]: **Sec. 48.3. "Grandparent visitation", for purposes of**  
4 **IC 31-17-2.2, means visitation rights granted to a grandparent**  
5 **under IC 31-17-5.**
- 6 SECTION 2. IC 31-9-2-84.6 IS ADDED TO THE INDIANA CODE  
7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
8 1, 2006]: **Sec. 84.6. "Nonrelocating individual", for purposes of**  
9 **IC 31-14-13 and IC 31-17-2.2, means an individual who has, or has**  
10 **filed an action seeking:**
- 11 (1) **custody of the child;**  
12 (2) **parenting time with the child; or**  
13 (3) **visitation with the child under IC 31-17-5.**
- 14 SECTION 3. IC 31-9-2-84.7 IS ADDED TO THE INDIANA CODE  
15 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
16 1, 2006]: **Sec. 84.7. "Nonrelocating parent", for purposes of**  
17 **IC 31-17-2.2, means a parent of a child who has or is seeking:**

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1 (1) custody of the child; or  
 2 (2) parenting time with the child;  
 3 and does not intend to move the individual's principal residence.  
 4 SECTION 4. IC 31-9-2-107.5 IS ADDED TO THE INDIANA  
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 6 [EFFECTIVE JULY 1, 2006]: **Sec. 107.5. "Relocating individual",**  
 7 **for purposes of IC 31-17-2.2, means an individual who has or is**  
 8 **seeking:**  
 9 (1) custody of a child; or  
 10 (2) parenting time with a child;  
 11 and intends to move the individual's principal residence. The term  
 12 does not include an individual granted visitation rights under  
 13 IC 31-17-5.  
 14 SECTION 5. IC 31-9-2-107.7 IS ADDED TO THE INDIANA  
 15 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 16 [EFFECTIVE JULY 1, 2006]: **Sec. 107.7. "Relocation", for purposes**  
 17 **of IC 31-17-2.2, means a change in the primary residence of an**  
 18 **individual for a period of at least sixty (60) days.**  
 19 SECTION 6. IC 31-14-13-10 IS AMENDED TO READ AS  
 20 FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 10.** If an individual  
 21 who has been awarded custody of **or parenting time with** a child  
 22 under ~~this chapter this article~~ (or IC 31-6-6.1-11 before its repeal)  
 23 intends to move ~~to a~~ **the individual's** residence, ~~other than a residence~~  
 24 ~~specified in the custody order that is outside Indiana or at least one~~  
 25 ~~hundred (100) miles from the individual's county of residence;~~ the  
 26 individual must:  
 27 (1) file a notice of that intent with the clerk of the court that  
 28 issued the custody **or parenting time** order; and  
 29 (2) send a copy of the notice to each ~~noncustodial parent~~  
 30 **nonrelocating individual in accordance with IC 31-17-2.2.**  
 31 SECTION 7. IC 31-17-2.2 IS ADDED TO THE INDIANA CODE  
 32 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 33 JULY 1, 2006]:  
 34 **Chapter 2.2. Relocation**  
 35 **Sec. 1. (a) A relocating individual must file a notice of the intent**  
 36 **to move with the clerk of the court that:**  
 37 (1) issued the custody order or parenting time order; or  
 38 (2) if subdivision (1) does not apply, has jurisdiction over the  
 39 legal proceedings concerning the custody of or parenting time  
 40 with a child;  
 41 and send a copy of the notice to any nonrelocating individual.  
 42 (b) Upon motion of a party, the court shall set the matter for a

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1 hearing to review and modify, if appropriate, a custody order,  
 2 parenting time order, grandparent visitation order, or child  
 3 support order. The court shall take into account the following in  
 4 determining whether to modify a custody order, parenting time  
 5 order, grandparent visitation order, or child support order:

6 (1) The distance involved in the proposed change of residence.

7 (2) The hardship and expense involved for the nonrelocating  
 8 individual to exercise parenting time or grandparent  
 9 visitation.

10 (3) The feasibility of preserving the relationship between the  
 11 nonrelocating individual and the child through suitable  
 12 parenting time and grandparent visitation arrangements,  
 13 including consideration of the financial circumstances of the  
 14 parties.

15 (4) Whether there is an established pattern of conduct by the  
 16 relocating individual, including actions by the relocating  
 17 individual to either promote or thwart a nonrelocating  
 18 individual's contact with the child.

19 (5) The reasons provided by the:

20 (A) relocating individual for seeking relocation; and

21 (B) nonrelocating parent for opposing the relocation of the  
 22 child.

23 (6) Other factors affecting the best interest of the child.

24 (c) The court may award reasonable attorney's fees for a motion  
 25 filed under this section in accordance with IC 31-15-10.

26 Sec. 2. (a) If a party provides notice of relocation at an initial  
 27 hearing to determine custody, the court may consider the factors  
 28 set forth in this chapter in the court's initial custody determination.

29 (b) The court may consider a proposed relocation of a child as  
 30 a factor in determining whether to modify a custody order,  
 31 parenting time order, grandparent visitation order, or child  
 32 support order.

33 Sec. 3. (a) Except as provided in section 4 of this chapter, an  
 34 individual required to file a notice under IC 31-14-13-10 or section  
 35 1 of this chapter must:

36 (1) send the notice to the nonrelocating individuals:

37 (A) by registered or certified mail; and

38 (B) not later than ninety (90) days before the date that the  
 39 relocating individual intends to move; and

40 (2) provide the following information in the notice:

41 (A) The intended new residence, including the:

42 (i) address; and

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(ii) mailing address of the relocating individual, if the mailing address is different than the address under item (i).

(B) The home telephone number of the new residence.

(C) Any other applicable telephone number for the relocating individual.

(D) The date that the relocating individual intends to move.

(E) A brief statement of the specific reasons for the proposed relocation of the child.

(F) A proposal for a revised schedule of parenting time or grandparent visitation with the child.

(G) A statement that a parent must file an objection to the relocation of the child with the court not later than sixty (60) days after receipt of the notice.

(H) A statement that a nonrelocating individual may file a petition to modify a custody order, parenting time order, grandparent visitation order, or child support order.

(b) Except as provided in section 4 of this chapter, if the relocating individual is unable to provide the information required under subsection (a)(2) not later than ninety (90) days before the relocating individual intends to move, the relocating individual shall provide the information in the manner required under subsection (a) not later than ten (10) days after the date that the relocating individual obtains the information required to be provided under subsection (a)(2). However, the relocating individual must provide all the information required under subsection (a)(2) not later than thirty (30) days before the relocating individual intends to move to the new residence.

Sec. 4. If a court finds that disclosure of the information required under section 3 of this chapter creates a significant risk of substantial harm to the relocating individual or the child, the court may order:

(1) that the address, the telephone number, or other identifying information of the relocating individual or child not be disclosed in the pleadings, other documents filed in the proceeding, or the final order;

(2) that the information required under section 3 of this chapter be maintained by the clerk of the court in a secure location separate from the pending case file;

(3) that the notice requirements under IC 31-14-13-10 or this chapter be waived to the extent necessary to protect the relocating individual or child from significant risk of

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substantial harm; or

(4) other remedial action that the court considers necessary to facilitate the legitimate needs of the parties and the best interest of the child.

Sec. 5. (a) Not later than sixty (60) days after receipt of the notice from the relocating individual under IC 31-14-13-10 or this chapter, a nonrelocating parent may file a motion seeking a temporary or permanent order to prevent the relocation of a child.

(b) On the request of either party, the court shall hold a full evidentiary hearing to grant or deny a relocation motion under subsection (a).

(c) The relocating individual has the burden of proof that the proposed relocation is made in good faith and for a legitimate reason.

(d) If the relocating individual meets the burden of proof under subsection (c), the burden shifts to the nonrelocating parent to show that the proposed relocation is not in the best interest of the child.

(e) If the nonrelocating parent fails to file a motion under subsection (a), the relocating individual who has custody of the child may relocate to the new residence.

Sec. 6. (a) If a nonrelocating parent files a motion under section 5 of this chapter, the court, after notice and an opportunity to be heard or after compliance with Trial Rule 65(B), may grant a temporary order restraining the relocation of a child or order the child to be returned to the nonrelocating parent if the court finds:

(1) that the notice required under IC 31-14-13-10 or this chapter was not served in a timely manner and the parties have not presented an agreement concerning a parenting time schedule;

(2) that the child has been relocated without:

(A) the appropriate notice;

(B) an agreement between the parties; or

(C) a court order; or

(3) from an examination of the evidence presented at the temporary hearing, that there is a likelihood that, after a final hearing, the court will not approve the relocation of the child.

(b) The court may grant a temporary order permitting the relocation of the child pending a final hearing if the court:

(1) determines that the notice required under IC 31-14-13-10 or this chapter was provided in a timely manner;

(2) issues an order for a revised schedule for temporary

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parenting time with the child; and

(3) reviews the evidence presented at the temporary hearing and determines that there is a likelihood that, after the final hearing, the court will approve the relocation of the child.

(c) If the court issues a temporary order authorizing the relocating individual to move, in its final judgment, the court must consider factors:

(1) other than; or

(2) in addition to;

the temporary relocation of the child when issuing a final order.

SECTION 8. IC 31-17-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. A grandparent seeking visitation rights shall file a petition requesting reasonable visitation rights:

(1) in a ~~circuit or superior circuit~~, **superior or probate** court of the county in which the child resides in a case described in section 1(a)(1), 1(a)(3), or 10 of this chapter; or

(2) in the court having jurisdiction over the dissolution of the parents' marriage in a case described in section 1(a)(2) of this chapter.

SECTION 9. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2006]: IC 31-17-2-4; IC 31-17-2-23.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 40, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 40 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

## SENATE MOTION

Madam President: I move that Senate Bill 40 be amended to read as follows:

Page 6, between lines 10 and 11, begin a new paragraph and insert: "SECTION 8. IC 31-17-5-4 IS AMENDED TO READ AS FOLLOWS: Sec. 4. A grandparent seeking visitation rights shall file a petition requesting reasonable visitation rights:

- (1) in a ~~circuit or superior circuit~~, **superior or probate** court of the county in which the child resides in a case described in section 1(a)(1), 1(a)(3), or 10 of this chapter; or
- (2) in the court having jurisdiction over the dissolution of the parents' marriage in a case described in section 1(a)(2) of this chapter."

Re-number all SECTIONS consecutively.

(Reference is to SB 40 as printed January 12, 2006.)

BRODEN

## COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure reports that pursuant to Senate Rule 33(c), the following technical correction is to be made to Engrossed Senate Bill 40.

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Page 6, line 12, after "FOLLOWS" insert "[EFFECTIVE JULY 1, 2006]".

GARTON, Chairperson

(Reference is to ESB 40 as reprinted January 18, 2006.)

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### COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 40, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 1, delete "IC 31-9-2-48.5" and insert "IC 31-9-2-48.3".

Page 1, line 3, delete "Sec. 48.5." and insert "**Sec. 48.3.**".

Page 1, line 6, delete "IC 31-9-2-84.5" and insert "IC 31-9-2-84.6".

Page 1, line 8, delete "Sec. 84.5." and insert "**Sec. 84.6.**".

Page 1, line 9, delete "has or is" and insert "**has, or has filed an action**".

Page 1, line 11, delete "a" and insert "**the**".

Page 1, line 12, delete "a" and insert "**the**".

Page 1, line 13, delete "a" and insert "**the**".

Page 3, line 24, after "award" insert "**reasonable**".

Page 3, line 36, delete "a" and insert "**the**".

Page 3, line 36, delete "individual:" and insert "**individuals:**".

Page 3, line 37, after "registered" insert "**or certified**".

Page 6, line 12, delete "FOLLOWS:" and insert "FOLLOWS [EFFECTIVE JULY 1, 2006]:".

and when so amended that said bill do pass.

(Reference is to SB 40 as reprinted January 18, 2006.)

FOLEY, Chair

Committee Vote: yeas 9, nays 2.

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